

SHB 2553 - S COMM AMD

By Committee on Financial Institutions, Housing & Consumer
Protection

ADOPTED 03/03/2006

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 48.110.010 and 1999 c 112 s 1 are each amended to
4 read as follows:

5 The legislature finds that increasing numbers of businesses are
6 selling service contracts for repair, replacement, and maintenance of
7 motor vehicles, appliances, computers, electronic equipment, and other
8 consumer products. There are risks that contract obligors will close
9 or otherwise be unable to fulfill their contract obligations that could
10 result in unnecessary and preventable losses to citizens of this state.
11 The legislature declares that it is necessary to establish standards
12 that will safeguard the public from possible losses arising from the
13 conduct or cessation of the business of service contract obligors or
14 the mismanagement of funds paid for service contracts. The purpose of
15 this chapter is to create a legal framework within which service
16 contracts may be sold in this state and to set forth requirements for
17 conducting a service contract business.

18 **Sec. 2.** RCW 48.110.015 and 2000 c 208 s 1 are each amended to read
19 as follows:

20 (1) The following are exempt from this title:

21 (a) Warranties;

22 (b) Maintenance agreements; and

23 (c) Service contracts:

24 (i) Paid for with separate and additional consideration;

25 (ii) Issued at the point of sale, or within sixty days of the
26 original purchase date of the property; and

27 (iii) On tangible property when the tangible property for which the
28 service contract is sold has a purchase price of fifty dollars or less,
29 exclusive of sales tax.

1 (2) This chapter does not apply to:

2 (a) (~~Vehicle service contracts which are governed under chapter~~
3 ~~48.96 RCW;~~

4 ~~(b))~~) Vehicle mechanical breakdown insurance; and

5 ~~((c))~~) (b) Service contracts on tangible personal property
6 purchased by persons who are not consumers.

7 **Sec. 3.** RCW 48.110.020 and 2000 c 208 s 2 are each amended to read
8 as follows:

9 The definitions in this section apply throughout this chapter.

10 (1) "Administrator" means the person who is responsible for the
11 administration of the service contracts (~~(e)~~), the service contracts
12 plan, or the protection product guarantees.

13 (2) "Commissioner" means the insurance commissioner of this state.

14 (3) "Consumer" means an individual who buys any tangible personal
15 property that is primarily for personal, family, or household use.

16 (4) "Incidental costs" means expenses specified in the guarantee
17 incurred by the protection product guarantee holder related to damages
18 to other property caused by the failure of the protection product to
19 perform as provided in the guarantee. "Incidental costs" may include,
20 without limitation, insurance policy deductibles, rental vehicle
21 charges, the difference between the actual value of the stolen vehicle
22 at the time of theft and the cost of a replacement vehicle, sales
23 taxes, registration fees, transaction fees, and mechanical inspection
24 fees. Incidental costs may be paid under the provisions of the
25 protection product guarantee in either a fixed amount specified in the
26 protection product guarantee or sales agreement, or by the use of a
27 formula itemizing specific incidental costs incurred by the protection
28 product guarantee holder to be paid.

29 (5) "Protection product" means any product offered or sold with a
30 guarantee to repair or replace another product or pay incidental costs
31 upon the failure of the product to perform pursuant to the terms of the
32 protection product guarantee.

33 (6) "Protection product guarantee" means a written agreement by a
34 protection product guarantee provider to repair or replace another
35 product or pay incidental costs upon the failure of the protection
36 product to perform pursuant to the terms of the protection product
37 guarantee.

1 (7) "Protection product guarantee provider" means a person who is
2 contractually obligated to the protection product guarantee holder
3 under the terms of the protection product guarantee. Protection
4 product guarantee provider does not include an authorized insurer
5 providing a reimbursement insurance policy.

6 (8) "Protection product guarantee holder" means a person who is the
7 purchaser or permitted transferee of a protection product guarantee.

8 (9) "Protection product seller" means the person who sells the
9 protection product to the consumer.

10 (10) "Maintenance agreement" means a contract of limited duration
11 that provides for scheduled maintenance only.

12 ~~((+5))~~ (11) "Motor vehicle" means any vehicle subject to
13 registration under chapter 46.16 RCW.

14 (12) "Person" means an individual, partnership, corporation,
15 incorporated or unincorporated association, joint stock company,
16 reciprocal insurer, syndicate, or any similar entity or combination of
17 entities acting in concert.

18 ~~((+6))~~ (13) "Premium" means the consideration paid to an insurer
19 for a reimbursement insurance policy.

20 ~~((+7))~~ (14) "Provider fee" means the consideration paid by a
21 consumer for a service contract.

22 ~~((+8))~~ (15) "Reimbursement insurance policy" means a policy of
23 insurance that is issued to a service contract provider or a protection
24 product guarantee provider to provide reimbursement to the service
25 contract provider or the protection product guarantee provider or to
26 pay on behalf of the service contract provider or the protection
27 product guarantee provider all contractual obligations incurred by the
28 service contract provider or the protection product guarantee provider
29 under the terms of the insured service contracts or protection product
30 guarantees issued or sold by the service contract provider or the
31 protection product guarantee provider.

32 ~~((+9))~~ (16) "Service contract" means a contract or agreement for
33 ~~((a separately stated))~~ consideration over and above the lease or
34 purchase price of the property for a specific duration to perform the
35 repair, replacement, or maintenance of property or the indemnification
36 for repair, replacement, or maintenance for operational or structural
37 failure due to a defect in materials or workmanship, or normal wear and
38 tear. Service contracts may provide for the repair, replacement, or

1 maintenance of property for damage resulting from power surges and
2 accidental damage from handling, with or without additional provision
3 for ~~((indemnity payments for incidental damages to other property
4 directly caused by the failure of the property which is the subject of
5 the service contract, provided the indemnity payment per incident does
6 not exceed the purchase price of the property that is the subject of
7 the service contract)) incidental payment of indemnity under limited
8 circumstances, including towing, rental, emergency road services, or
9 other expenses relating to the failure of the product or of a component
10 part thereof.~~

11 ~~((+10+))~~ (17) "Service contract holder" or "contract holder" means
12 a person who is the purchaser or holder of a service contract.

13 ~~((+11+))~~ (18) "Service contract provider" means a person who is
14 contractually obligated to the service contract holder under the terms
15 of the service contract.

16 ~~((+12+))~~ (19) "Service contract seller" means the person who sells
17 the service contract to the consumer.

18 ~~((+13+))~~ (20) "Warranty" means a warranty made solely by the
19 manufacturer, importer, or seller of property or services without
20 consideration; that is not negotiated or separated from the sale of the
21 product and is incidental to the sale of the product; and that
22 guarantees indemnity for defective parts, mechanical or electrical
23 breakdown, labor, or other remedial measures, such as repair or
24 replacement of the property or repetition of services.

25 **Sec. 4.** RCW 48.110.030 and 2005 c 223 s 33 are each amended to
26 read as follows:

27 (1) A person may not act as, or offer to act as, or hold himself or
28 herself out to be a service contract provider in this state, nor may a
29 service contract be sold to a consumer in this state, unless the
30 service contract provider has a valid registration as a service
31 contract provider issued by the commissioner.

32 (2) Applicants to be a service contract provider must make an
33 application to the commissioner upon a form to be furnished by the
34 commissioner. The application must include or be accompanied by the
35 following information and documents:

36 (a) All basic organizational documents of the service contract
37 provider, including any articles of incorporation, articles of

1 association, partnership agreement, trade name certificate, trust
2 agreement, shareholder agreement, bylaws, and other applicable
3 documents, and all amendments to those documents;

4 (b) The identities of the service contract provider's executive
5 officer or officers directly responsible for the service contract
6 provider's service contract business, and, if more than fifty percent
7 of the service contract provider's gross revenue is derived from the
8 sale of service contracts, the identities of the service contract
9 provider's directors and stockholders having beneficial ownership of
10 ten percent or more of any class of securities;

11 (c) Audited annual financial statements or other financial reports
12 acceptable to the commissioner for the two most recent years which
13 prove that the applicant is solvent and any information the
14 commissioner may require in order to review the current financial
15 condition of the applicant. If the service contract provider is
16 relying on RCW 48.110.050(2) (~~((a) or~~) (c) to assure the faithful
17 performance of its obligations to service contract holders, then the
18 audited financial statements of the service contract provider's parent
19 company (~~(may be substituted for the audited financial statements of~~
20 ~~the service contract provider)~~) must also be filed;

21 (d) An application fee of two hundred fifty dollars, which shall be
22 deposited into the general fund; and

23 (e) Any other pertinent information required by the commissioner.

24 (3) The applicant shall appoint the commissioner as its attorney to
25 receive service of legal process in any action, suit, or proceeding in
26 any court. This appointment is irrevocable and shall bind the service
27 contract provider or any successor in interest, shall remain in effect
28 as long as there is in force in this state any contract or any
29 obligation arising therefrom related to residents of this state, and
30 shall be processed in accordance with RCW 48.05.210.

31 (4) The commissioner may refuse to issue a registration if the
32 commissioner determines that the service contract provider, or any
33 individual responsible for the conduct of the affairs of the service
34 contract provider under subsection (2)(b) of this section, is not
35 competent, trustworthy, financially responsible, or has had a license
36 as a service contract provider or similar license denied or revoked for
37 cause by any state.

1 (5) A registration issued under this section is valid, unless
2 surrendered, suspended, or revoked by the commissioner, or not renewed
3 for so long as the service contract provider continues in business in
4 this state and remains in compliance with this chapter. A registration
5 is subject to renewal annually on the first day of July upon
6 application of the service contract provider and payment of a fee of
7 two hundred dollars, which shall be deposited into the general fund.
8 If not so renewed, the registration expires on the June 30th next
9 preceding.

10 (6) A service contract provider shall keep current the information
11 required to be disclosed in its registration under this section by
12 reporting all material changes or additions within thirty days after
13 the end of the month in which the change or addition occurs.

14 **Sec. 5.** RCW 48.110.040 and 2005 c 223 s 34 are each amended to
15 read as follows:

16 (1) Every registered service contract provider (~~((that is assuring~~
17 ~~its faithful performance of its obligations to its service contract~~
18 ~~holders by complying with RCW 48.110.050(2)(b))~~) must file an annual
19 report for the preceding calendar year with the commissioner on or
20 before March 1st of each year, or within any extension of time the
21 commissioner for good cause may grant. The report must be in the form
22 and contain those matters as the commissioner prescribes and shall be
23 verified by at least two officers of the service contract provider.

24 (2) At the time of filing the report, the service contract provider
25 must pay a filing fee of twenty dollars which shall be deposited into
26 the general fund.

27 (3) As part of any investigation by the commissioner, the
28 commissioner may require a service contract provider to file monthly
29 financial reports whenever, in the commissioner's discretion, there is
30 a need to more closely monitor the financial activities of the service
31 contract provider. Monthly financial statements must be filed in the
32 commissioner's office no later than the twenty-fifth day of the month
33 following the month for which the financial report is being filed.
34 These monthly financial reports are the internal financial statements
35 of the service contract provider. The monthly financial reports that
36 are filed with the commissioner constitute information that might be
37 damaging to the service contract provider if made available to its

1 competitors, and therefore shall be kept confidential by the
2 commissioner. This information may not be made public or be subject to
3 subpoena, other than by the commissioner and then only for the purpose
4 of enforcement actions taken by the commissioner.

5 **Sec. 6.** RCW 48.110.050 and 1999 c 112 s 6 are each amended to read
6 as follows:

7 (1) Service contracts shall not be issued, sold, or offered for
8 sale in this state or sold to consumers in this state unless the
9 service contract provider has:

10 (a) Provided a receipt for, or other written evidence of, the
11 purchase of the service contract to the contract holder; and

12 (b) Provided a copy of the service contract to the service contract
13 holder within a reasonable period of time from the date of purchase.

14 (2) In order to either demonstrate its financial responsibility or
15 assure the faithful performance of ((a)) the service contract
16 provider's obligations to its service contract holders, every service
17 contract provider shall ((be responsible for complying)) comply with
18 the requirements of one of the following:

19 (a) Insure all service contracts under a reimbursement insurance
20 policy issued by an insurer holding a certificate of authority from the
21 commissioner or a risk retention group, as defined in 15 U.S.C. Sec.
22 3901(a)(4), as long as that risk retention group is in full compliance
23 with the federal liability risk retention act of 1986 (15 U.S.C. Sec.
24 3901 et seq.), is in good standing in its domiciliary jurisdiction, and
25 is properly registered with the commissioner under chapter 48.92 RCW.
26 The insurance required by this subsection must meet the following
27 requirements:

28 (i) The insurer or risk retention group must, at the time the
29 policy is filed with the commissioner, and continuously thereafter,
30 maintain surplus as to policyholders and paid-in capital of at least
31 fifteen million dollars and annually file audited financial statements
32 with the commissioner; and

33 (ii) The commissioner may authorize an insurer or risk retention
34 group that has surplus as to policyholders and paid-in capital of less
35 than fifteen million dollars, but at least equal to ten million
36 dollars, to issue the insurance required by this subsection if the
37 insurer or risk retention group demonstrates to the satisfaction of the

1 commissioner that the company maintains a ratio of direct written
2 premiums, wherever written, to surplus as to policyholders and paid-in
3 capital of not more than three to one;

4 (b)(i) Maintain a funded reserve account for its obligations under
5 its service contracts issued and outstanding in this state. The
6 reserves shall not be less than forty percent of the gross
7 consideration received, less claims paid, on the sale of the service
8 contract for all in-force contracts. The reserve account shall be
9 subject to examination and review by the commissioner; and

10 (ii) Place in trust with the commissioner a financial security
11 deposit, having a value of not less than five percent of the gross
12 consideration received, less claims paid, on the sale of the service
13 contract for all service contracts issued and in force, but not less
14 than twenty-five thousand dollars, consisting of one of the following:

15 (A) A surety bond issued by an insurer holding a certificate of
16 authority from the commissioner;

17 (B) Securities of the type eligible for deposit by authorized
18 insurers in this state;

19 (C) Cash;

20 (D) An evergreen letter of credit issued by a qualified financial
21 institution; or

22 (E) Another form of security prescribed by rule by the
23 commissioner; or

24 (c)(i) Maintain, or its parent company maintain, a net worth or
25 stockholder's equity of at least one hundred million dollars; and

26 (ii) Upon request, provide the commissioner with a copy of the
27 service contract provider's or the service contract provider's parent
28 company's most recent form 10-K or form 20-F filed with the securities
29 and exchange commission within the last calendar year, or if the
30 company does not file with the securities and exchange commission, a
31 copy of the service contract provider's or the service contract
32 provider's parent company's audited financial statements, which shows
33 a net worth of the service contract provider or its parent company of
34 at least one hundred million dollars. If the service contract
35 provider's parent company's form 10-K, form 20-F, or audited financial
36 statements are filed with the commissioner to meet the service contract
37 provider's financial stability requirement, then the parent company
38 shall agree to guarantee the obligations of the service contract

1 provider relating to service contracts sold by the service contract
2 provider in this state. A copy of the guarantee shall be filed with
3 the commissioner. The guarantee shall be irrevocable as long as there
4 is in force in this state any contract or any obligation arising from
5 service contracts guaranteed, unless the parent company has made
6 arrangements approved by the commissioner to satisfy its obligations
7 under the guarantee.

8 (3) Service contracts shall require the service contract provider
9 to permit the service contract holder to return the service contract
10 within twenty days of the date the service contract was mailed to the
11 service contract holder or within ten days of delivery if the service
12 contract is delivered to the service contract holder at the time of
13 sale, or within a longer time period permitted under the service
14 contract. Upon return of the service contract to the service contract
15 provider within the applicable period, if no claim has been made under
16 the service contract prior to the return to the service contract
17 provider, the service contract is void and the service contract
18 provider shall refund to the service contract holder, or credit the
19 account of the service contract holder with the full purchase price of
20 the service contract. The right to void the service contract provided
21 in this subsection is not transferable and shall apply only to the
22 original service contract purchaser. A ten percent penalty per month
23 shall be added to a refund of the purchase price that is not paid or
24 credited within thirty days after return of the service contract to the
25 service contract provider.

26 ~~(4) ((Except for service contract providers, persons marketing,~~
27 ~~selling, or offering to sell service contracts for providers are exempt~~
28 ~~from the registration requirements of RCW 48.110.030.~~

29 ~~(5) The marketing, sale, offering for sale, issuance, making,~~
30 ~~proposing to make, and administration of service contracts by service~~
31 ~~contract providers and related service contract sellers,~~
32 ~~administrators, and other persons complying with this chapter are~~
33 ~~exempt from the other provisions of this title, except chapter 48.04~~
34 ~~RCW and as otherwise provided in this chapter.)) This section does not~~
35 ~~apply to service contracts on motor vehicles or to protection product~~
36 ~~guarantees.~~

1 **Sec. 7.** RCW 48.110.060 and 1999 c 112 s 7 are each amended to read
2 as follows:

3 (1) Reimbursement insurance policies insuring service contracts or
4 protection product guarantees issued, sold, or offered for sale in this
5 state or issued or sold to consumers in this state shall state that the
6 insurer that issued the reimbursement insurance policy shall reimburse
7 or pay on behalf of the service contract provider or the protection
8 product guarantee provider all sums the service contract provider or
9 the protection product guarantee provider is legally obligated to pay,
10 including but not limited to the refund of the full purchase price of
11 the service contract to the service contract holder or shall provide
12 the service which the service contract provider or the protection
13 product guarantee provider is legally obligated to perform according to
14 the service contract provider's or protection product guarantee
15 provider's contractual obligations under the service contracts or
16 protection product guarantees issued or sold by the service contract
17 provider or the protection product guarantee provider.

18 (2) The reimbursement insurance policy shall fully insure the
19 obligations of the service contract provider or protection product
20 guarantee provider, rather than partially insure, or insure only in the
21 event of service contract provider or protection product guarantee
22 provider default.

23 (3) The reimbursement insurance policy shall state that the service
24 contract holder or protection product guarantee holder is entitled to
25 apply directly to the reimbursement insurance company for payment or
26 performance due.

27 **Sec. 8.** RCW 48.110.070 and 1999 c 112 s 8 are each amended to read
28 as follows:

29 (1) Service contracts marketed, sold, offered for sale, issued,
30 made, proposed to be made, or administered in this state or sold to
31 residents of this state shall be written, printed, or typed in clear,
32 understandable language that is easy to read, and disclose the
33 requirements set forth in this section, as applicable.

34 (2) Service contracts insured under a reimbursement insurance
35 policy under RCW 48.110.050(2)(a) and 48.110.060 shall not be issued,
36 sold, or offered for sale in this state or sold to residents of this
37 state unless the service contract conspicuously contains a statement in

1 substantially the following form: "Obligations of the service contract
2 provider under this service contract are insured under a service
3 contract reimbursement insurance policy." The service contract shall
4 also conspicuously state the name and address of the issuer of the
5 reimbursement (~~(insurance)~~) insurance policy and state that the
6 service contract holder is entitled to apply directly to the
7 reimbursement insurance company.

8 (3) Service contracts not insured under a reimbursement insurance
9 policy under RCW 48.110.050(2)(a) and 48.110.060 shall contain a
10 statement in substantially the following form: "Obligations of the
11 service contract provider under this contract are backed by the full
12 faith and credit of the service contract provider."

13 (4) Service contracts shall state the name and address of the
14 service contract provider and shall identify any administrator if
15 different from the service contract provider, the service contract
16 seller, and the service contract holder to the extent that the name of
17 the service contract holder has been furnished by the service contract
18 holder. The identities of such parties are not required to be
19 preprinted on the service contract and may be added to the service
20 contract at the time of sale.

21 (5) Service contracts shall state the purchase price of the service
22 contract and the terms under which the service contract is sold. The
23 purchase price is not required to be preprinted on the service contract
24 and may be negotiated at the time of sale.

25 (6) Service contracts shall state the procedure to obtain service
26 or to file a claim, including but not limited to the procedures for
27 obtaining prior approval for repair work, the toll-free telephone
28 number if prior approval is necessary for service, and the procedure
29 for obtaining emergency repairs performed outside of normal business
30 hours or provide for twenty-four-hour telephone assistance.

31 (7) Service contracts shall state the existence of any deductible
32 amount, if applicable.

33 (8) Service contracts shall specify the merchandise, parts, and
34 services to be provided and any limitations, exceptions, or exclusions.

35 (9) Service contracts shall state any restrictions governing the
36 transferability of the service contract, if applicable.

37 (10) Service contracts shall state the terms, restrictions, or
38 conditions governing cancellation of the service contract prior to the

1 termination or expiration date of the service contract by either the
2 service contract provider or by the service contract holder, which
3 rights can be no more restrictive than provided in RCW 48.110.050(3).
4 The service contract provider of the service contract shall mail a
5 written notice to the service contract holder at the last known address
6 of the service contract holder contained in the records of the service
7 contract provider at least twenty-one days prior to cancellation by the
8 service contract provider. The notice shall state the effective date
9 of the cancellation and the true and actual reason for the
10 cancellation.

11 (11) Service contracts shall set forth the obligations and duties
12 of the service contract holder, including but not limited to the duty
13 to protect against any further damage and any requirement to follow
14 owner's manual instructions.

15 (12) Service contracts shall state whether or not the service
16 contract provides for or excludes consequential damages or preexisting
17 conditions.

18 (13) Service contracts shall state any exclusions of coverage.

19 (14) Service contracts shall not contain a provision which requires
20 that any civil action brought in connection with the service contract
21 must be brought in the courts of a jurisdiction other than this state.
22 Service contracts that authorize binding arbitration to resolve claims
23 or disputes (~~may~~) must allow for arbitration proceedings to be held
24 at a location in closest proximity to the service contract holder's
25 permanent residence.

26 This section does not apply to service contracts on motor vehicles
27 or to protection product guarantees.

28 **Sec. 9.** RCW 48.110.080 and 1999 c 112 s 9 are each amended to read
29 as follows:

30 (1) A service contract provider or protection product guarantee
31 provider shall not use in its name the words insurance, casualty,
32 guaranty, surety, mutual, or any other words descriptive of the
33 insurance, casualty, guaranty, or surety business; or a name
34 deceptively similar to the name or description of any insurance or
35 surety corporation, or to the name of any other service contract
36 provider or protection product guarantee provider. This subsection
37 does not apply to a company that was using any of the prohibited

1 language in its name prior to January 1, 1999. However, a company
2 using the prohibited language in its name shall conspicuously disclose
3 in its service contracts or protection product guarantees the following
4 statement: "This agreement is not an insurance contract."

5 (2) Every service contract provider or protection product guarantee
6 provider shall conduct its business in its own legal name, unless the
7 commissioner has approved the use of another name.

8 (3) A service contract provider or protection product guarantee
9 provider or (~~its~~) their representatives shall not in (~~its~~) their
10 service contracts or protection product guarantees or literature make,
11 permit, or cause to be made any false or misleading statement, or
12 deliberately omit any material statement that would be considered
13 misleading if omitted.

14 (4) A person, such as a bank, savings and loan association, lending
15 institution, manufacturer, or seller shall not require the purchase of
16 a service contract or protection product as a condition of a loan or a
17 condition for the sale of any property.

18 **Sec. 10.** RCW 48.110.090 and 1999 c 112 s 10 are each amended to
19 read as follows:

20 (1) The service contract provider or protection product guarantee
21 provider shall keep accurate accounts, books, and records concerning
22 transactions regulated under this chapter.

23 (2) The service contract provider's or protection product guarantee
24 provider's accounts, books, and records shall include the following:

25 (a) Copies of each type of service contract or protection product
26 guarantees offered, issued, or sold;

27 (b) The name and address of each service contract holder or
28 protection product guarantee holder, to the extent that the name and
29 address have been furnished by the service contract holder or
30 protection product guarantee holder;

31 (c) A list of the locations where the service contracts or
32 protection products are marketed, sold, or offered for sale; and

33 (d) Written claim files that contain at least the dates, amounts,
34 and descriptions of claims related to the service contracts or
35 protection products.

36 (3) Except as provided in subsection (5) of this section, the
37 service contract provider or protection product guarantee provider

1 shall retain all records required to be maintained by subsection (1) of
2 this section for at least six years after the specified coverage has
3 expired.

4 (4) The records required under this chapter may be, but are not
5 required to be, maintained on a computer disk or other recordkeeping
6 technology. If the records are maintained in other than hard copy, the
7 records shall be capable of duplication to legible hard copy.

8 (5) A service contract provider or protection product guarantee
9 provider discontinuing business in this state shall maintain its
10 records until it furnishes the commissioner satisfactory proof that it
11 has discharged all obligations to service contract holders or
12 protection product guarantee holders in this state.

13 **Sec. 11.** RCW 48.110.100 and 1999 c 112 s 11 are each amended to
14 read as follows:

15 As applicable, an insurer that issued a reimbursement insurance
16 policy shall not terminate the policy until a notice of termination in
17 accordance with RCW 48.18.290 has been given to the service contract
18 provider or protection product guarantee provider and has been
19 delivered to the commissioner. The termination of a reimbursement
20 insurance policy does not reduce the issuer's responsibility for
21 service contracts issued by service contract providers or protection
22 product guarantees issued by protection product guarantee providers
23 prior to the effective date of the termination.

24 **Sec. 12.** RCW 48.110.110 and 1999 c 112 s 12 are each amended to
25 read as follows:

26 (1) Service contract providers or protection product guarantee
27 providers are considered to be the agent of the insurer which issued
28 the reimbursement insurance policy for purposes of obligating the
29 insurer to service contract holders or protection product guarantee
30 holders in accordance with the service contract or protection product
31 guarantee holders and this chapter. Payment of the provider fee by the
32 consumer to the service contract seller, service contract provider, or
33 administrator or payment of consideration for the protection product to
34 the protection product seller constitutes payment by the consumer to
35 the service contract provider or protection product guarantee provider
36 and to the insurer which issued the reimbursement insurance policy. In

1 cases where a service contract provider or protection product guarantee
2 provider is acting as an administrator and enlists other service
3 contract providers or protection product guarantee providers, the
4 service contract provider or protection product guarantee provider
5 acting as the administrator shall notify the insurer of the existence
6 and identities of the other service contract providers or protection
7 product guarantee providers.

8 (2) (~~Chapter 112, Laws of 1999~~) This chapter does not prevent or
9 limit the right of an insurer which issued a reimbursement insurance
10 policy to seek indemnification or subrogation against a service
11 contract provider or protection product guarantee provider if the
12 issuer pays or is obligated to pay the service contract holder or
13 protection product guarantee holder sums that the service contract
14 provider or protection product guarantee provider was obligated to pay
15 under the provisions of the service contract or protection product
16 guarantee.

17 **Sec. 13.** RCW 48.110.120 and 1999 c 112 s 13 are each amended to
18 read as follows:

19 (1) The commissioner may conduct investigations of service contract
20 providers or protection product guarantee providers, administrators,
21 service contract sellers or protection product sellers, insurers, and
22 other persons to enforce this chapter and protect service contract
23 holders or protection product guarantee holders in this state. Upon
24 request of the commissioner, the service contract provider or
25 protection product guarantee provider shall make all accounts, books,
26 and records concerning service contracts or protection products
27 offered, issued, or sold by the service contract provider or protection
28 product guarantee provider available to the commissioner which are
29 necessary to enable the commissioner to determine compliance or
30 noncompliance with this chapter.

31 (2) The commissioner may take actions under RCW 48.02.080 or
32 48.04.050 which are necessary or appropriate to enforce this chapter
33 and the commissioner's rules and orders, and to protect service
34 contract holders or protection product guarantee holders in this state.

35 **Sec. 14.** RCW 48.110.130 and 1999 c 112 s 14 are each amended to
36 read as follows:

1 (1) The commissioner may, subject to chapter 48.04 RCW, deny,
2 suspend, or revoke the registration of a service contract provider or
3 protection product guarantee provider if the commissioner finds that
4 the service contract provider or protection product guarantee provider:

5 (a) Has violated this chapter or the commissioner's rules and
6 orders;

7 (b) Has refused to be investigated or to produce its accounts,
8 records, and files for investigation, or if any of its officers have
9 refused to give information with respect to its affairs or refused to
10 perform any other legal obligation as to an investigation, when
11 required by the commissioner;

12 (c) Has, without just cause, refused to pay proper claims or
13 perform services arising under its contracts or has, without just
14 cause, caused service contract holders or protection product guarantee
15 holders to accept less than the amount due them or caused service
16 contract holders or protection product guarantee holders to employ
17 attorneys or bring suit against the service contract provider or
18 protection product guarantee provider to secure full payment or
19 settlement of claims;

20 (d) Is affiliated with or under the same general management or
21 interlocking directorate or ownership as another service contract
22 provider or protection product guarantee provider which unlawfully
23 transacts business in this state without having a registration;

24 (e) At any time fails to meet any qualification for which issuance
25 of the registration could have been refused had such failure then
26 existed and been known to the commissioner;

27 (f) Has been convicted of, or has entered a plea of guilty or nolo
28 contendere to, a felony;

29 (g) Is under suspension or revocation in another state with respect
30 to its service contract business or protection product business;

31 (h) Has made a material misstatement in its application for
32 registration;

33 (i) Has obtained or attempted to obtain a registration through
34 misrepresentation or fraud;

35 (j) Has, in the transaction of business under its registration,
36 used fraudulent, coercive, or dishonest practices; ((~~or~~))

37 (k) Has failed to pay any judgment rendered against it in this

1 state regarding a service contract or protection product guarantee
2 within sixty days after the judgment has become final; or

3 (1) Has failed to respond promptly to any inquiry from the
4 insurance commissioner relative to service contract or protection
5 product business. A lack of response within fifteen business days from
6 receipt of an inquiry is untimely. A response must be in writing,
7 unless otherwise indicated in the inquiry.

8 (2) The commissioner may, without advance notice or hearing
9 thereon, immediately suspend the registration of a service contract
10 provider or protection product guarantee provider if the commissioner
11 finds that any of the following circumstances exist:

12 (a) The provider is insolvent;

13 (b) A proceeding for receivership, conservatorship, rehabilitation,
14 or other delinquency proceeding regarding the service contract provider
15 or protection product guarantee provider has been commenced in any
16 state; or

17 (c) The financial condition or business practices of the service
18 contract provider or protection product guarantee provider otherwise
19 pose an imminent threat to the public health, safety, or welfare of the
20 residents of this state.

21 (3) If the commissioner finds that grounds exist for the suspension
22 or revocation of a registration issued under this chapter, the
23 commissioner may, in lieu of suspension or revocation, impose a fine
24 upon the service contract provider or protection product guarantee
25 provider in an amount not more than two thousand dollars per violation.

26 **Sec. 15.** RCW 48.110.140 and 1999 c 112 s 15 are each amended to
27 read as follows:

28 The legislature finds that the practices covered by this chapter
29 are matters vitally affecting the public interest for the purpose of
30 applying the consumer protection act, chapter 19.86 RCW. Violations of
31 this chapter are not reasonable in relation to the development and
32 preservation of business. A violation of this chapter is an unfair or
33 deceptive act or practice in the conduct of trade or commerce and an
34 unfair method of competition, as specifically contemplated by RCW
35 19.86.020, and is a violation of the consumer protection act, chapter
36 19.86 RCW. Any service contract holder or protection product guarantee
37 holder injured as a result of a violation of a provision of this

1 chapter shall be entitled to maintain an action pursuant to chapter
2 19.86 RCW against the service contract provider or protection product
3 guarantee provider and the insurer issuing the applicable service
4 contract or protection product guarantee reimbursement (~~(insurance)~~)
5 insurance policy and shall be entitled to all of the rights and
6 remedies afforded by that chapter.

7 **Sec. 16.** RCW 48.110.900 and 1999 c 112 s 17 are each amended to
8 read as follows:

9 This chapter applies to all service contracts, other than on motor
10 vehicles, sold or offered for sale ninety or more days after July 25,
11 1999. This chapter applies to all service contracts on motor vehicles
12 and protection products sold or offered for sale after September 30,
13 2006.

14 NEW SECTION. **Sec. 17.** A new section is added to chapter 48.110
15 RCW to read as follows:

16 (1) This section applies to protection product guarantee providers.

17 (2) A person shall not act as, or offer to act as, or hold himself
18 or herself out to be a protection product guarantee provider in this
19 state, nor may a protection product be sold to a consumer in this
20 state, unless the protection product guarantee provider has:

21 (a) A valid registration as a protection product guarantee provider
22 issued by the commissioner; and

23 (b) Either demonstrated its financial responsibility or assured the
24 faithful performance of the protection product guarantee provider's
25 obligations to its protection product guarantee holders by insuring all
26 protection product guarantees under a reimbursement insurance policy
27 issued by an insurer holding a certificate of authority from the
28 commissioner or a risk retention group, as defined in 15 U.S.C. Sec.
29 3901(a)(4), as long as that risk retention group is in full compliance
30 with the federal liability risk retention act of 1986 (15 U.S.C. Sec.
31 3901 et seq.), is in good standing in its domiciliary jurisdiction, and
32 properly registered with the commissioner under chapter 48.92 RCW. The
33 insurance required by this subsection must meet the following
34 requirements:

35 (i) The insurer or risk retention group must, at the time the
36 policy is filed with the commissioner, and continuously thereafter,

1 maintain surplus as to policyholders and paid-in capital of at least
2 fifteen million dollars and annually file audited financial statements
3 with the commissioner; and

4 (ii) The commissioner may authorize an insurer or risk retention
5 group that has surplus as to policyholders and paid-in capital of less
6 than fifteen million dollars, but at least equal to ten million
7 dollars, to issue the insurance required by this subsection if the
8 insurer or risk retention group demonstrates to the satisfaction of the
9 commissioner that the company maintains a ratio of direct written
10 premiums, wherever written, to surplus as to policyholders and paid-in
11 capital of not more than three to one.

12 (3) Applicants to be a protection product guarantee provider shall
13 make an application to the commissioner upon a form to be furnished by
14 the commissioner. The application shall include or be accompanied by
15 the following information and documents:

16 (a) The names of the protection product guarantee provider's
17 executive officer or officers directly responsible for the protection
18 product guarantee provider's protection product guarantee business and
19 their biographical affidavits on a form prescribed by the commissioner;

20 (b) The name, address, and telephone number of any administrators
21 designated by the protection product guarantee provider to be
22 responsible for the administration of protection product guarantees in
23 this state;

24 (c) A copy of the protection product guarantee reimbursement
25 insurance policy or policies;

26 (d) A copy of each protection product guarantee the protection
27 product guarantee provider proposes to use in this state;

28 (e) Any other pertinent information required by the commissioner;
29 and

30 (f) A nonrefundable application fee of two hundred fifty dollars.

31 (4) The applicant shall appoint the commissioner as its attorney to
32 receive service of legal process in any action, suit, or proceeding in
33 any court. This appointment is irrevocable and shall bind the
34 protection product guarantee provider or any successor in interest,
35 shall remain in effect as long as there is in force in this state any
36 protection product guarantee or any obligation arising therefrom
37 related to residents of this state, and shall be processed in
38 accordance with RCW 48.05.210.

1 (5) The commissioner may refuse to issue a registration if the
2 commissioner determines that the protection product guarantee provider,
3 or any individual responsible for the conduct of the affairs of the
4 protection product guarantee provider under subsection (3)(a) of this
5 section, is not competent, trustworthy, financially responsible, or has
6 had a license as a protection product guarantee provider or similar
7 license denied or revoked for cause by any state.

8 (6) A registration issued under this section is valid, unless
9 surrendered, suspended, or revoked by the commissioner, or not renewed
10 for so long as the protection product guarantee provider continues in
11 business in this state and remains in compliance with this chapter. A
12 registration is subject to renewal annually on the first day of July
13 upon application of the protection product guarantee provider and
14 payment of a fee of two hundred fifty dollars. If not so renewed, the
15 registration expires on the June 30th next preceding.

16 (7) A protection product guarantee provider shall keep current the
17 information required to be disclosed in its registration under this
18 section by reporting all material changes or additions within thirty
19 days after the end of the month in which the change or addition occurs.

20 NEW SECTION. **Sec. 18.** A new section is added to chapter 48.110
21 RCW to read as follows:

22 (1) This section applies to service contracts on motor vehicles.

23 (2) Service contracts shall not be issued, sold, or offered for
24 sale in this state or sold to consumers in this state unless:

25 (a) The service contract provider has either demonstrated its
26 financial responsibility or assured the faithful performance of the
27 service contract provider's obligations to its service contract holders
28 by insuring all service contracts under a reimbursement insurance
29 policy issued by an insurer holding a certificate of authority from the
30 commissioner or a risk retention group, as defined in 15 U.S.C. Sec.
31 3901(a)(4), as long as that risk retention group is in full compliance
32 with the federal liability risk retention act of 1986 (15 U.S.C. Sec.
33 3901 et seq.), is in good standing in its domiciliary jurisdiction, and
34 properly registered with the commissioner under chapter 48.92 RCW. The
35 insurance required by this subsection must meet the following
36 requirements:

1 (i) The insurer or risk retention group must, at the time the
2 policy is filed with the commissioner, and continuously thereafter,
3 maintain surplus as to policyholders and paid-in capital of at least
4 fifteen million dollars and annually file audited financial statements
5 with the commissioner; and

6 (ii) The commissioner may authorize an insurer or risk retention
7 group that has surplus as to policyholders and paid-in capital of less
8 than fifteen million dollars, but at least equal to ten million
9 dollars, to issue the insurance required by this subsection if the
10 insurer or risk retention group demonstrates to the satisfaction of the
11 commissioner that the company maintains a ratio of direct written
12 premiums, wherever written, to surplus as to policyholders and paid-in
13 capital of not more than three to one;

14 (b) The service contract conspicuously states that the obligations
15 of the provider to the service contract holder are guaranteed under the
16 reimbursement insurance policy, the name and address of the issuer of
17 the reimbursement insurance policy, the applicable policy number, and
18 the means by which a service contract holder may file a claim under the
19 policy;

20 (c) The service contract conspicuously and unambiguously states the
21 name and address of the service contract provider and identifies any
22 administrator if different from the service contract provider, the
23 service contract seller, and the service contract holder. The identity
24 of the service contract seller and the service contract holder are not
25 required to be preprinted on the service contract and may be added to
26 the service contract at the time of sale;

27 (d) The service contract states the purchase price of the service
28 contract and the terms under which the service contract is sold. The
29 purchase price is not required to be preprinted on the service contract
30 and may be negotiated at the time of sale;

31 (e) The contract contains a conspicuous statement that has been
32 initialed by the service contract holder and discloses:

33 (i) Any material conditions that the service contract holder must
34 meet to maintain coverage under the contract including, but not limited
35 to, any maintenance schedule to which the service contract holder must
36 adhere, any requirement placed on the service contract holder for
37 documenting repair or maintenance work, any duty to protect against any

1 further damage, and any procedure to which the service contract holder
2 must adhere for filing claims;

3 (ii) The work and parts covered by the contract;

4 (iii) Any time or mileage limitations;

5 (iv) That the implied warranty of merchantability on the motor
6 vehicle is not waived if the contract has been purchased within ninety
7 days of the purchase date of the motor vehicle from a provider or
8 service contract seller who also sold the motor vehicle covered by the
9 contract;

10 (v) Any exclusions of coverage; and

11 (vi) The contract holder's right to return the contract for a
12 refund, which right can be no more restrictive than provided for in
13 subsection (4) of this section;

14 (f) The service contract states the procedure to obtain service or
15 to file a claim, including but not limited to the procedures for
16 obtaining prior approval for repair work, the toll-free telephone
17 number if prior approval is necessary for service, and the procedure
18 for obtaining emergency repairs performed outside of normal business
19 hours or for obtaining twenty-four-hour telephone assistance;

20 (g) The service contract states the existence of any deductible
21 amount, if applicable;

22 (h) The service contract states any restrictions governing the
23 transferability of the service contract, if applicable; and

24 (i) The service contract states whether or not the service contract
25 provides for or excludes consequential damages or preexisting
26 conditions.

27 (3) Service contracts shall not contain a provision which requires
28 that any civil action brought in connection with the service contract
29 must be brought in the courts of a jurisdiction other than this state.
30 Service contracts that authorize binding arbitration to resolve claims
31 or disputes must allow for arbitration proceedings to be held at a
32 location in closest proximity to the service contract holder's
33 permanent residence.

34 (4)(a) At a minimum, every provider shall permit the service
35 contract holder to return the contract within thirty days of its
36 purchase if no claim has been made under the contract, and shall refund
37 to the holder the full purchase price of the contract unless the

1 service contract holder returns the contract ten or more days after its
2 purchase, in which case the provider may charge a cancellation fee not
3 exceeding twenty-five dollars.

4 (b) If no claim has been made and a contract holder returns the
5 contract after thirty days, the provider shall refund the purchase
6 price pro rata based upon either elapsed time or mileage computed from
7 the date the contract was purchased and the mileage on that date, less
8 a cancellation fee not exceeding twenty-five dollars.

9 (c) A ten percent penalty shall be added to any refund that is not
10 paid within thirty days of return of the contract to the provider.

11 (d) If a contract holder returns the contract under this
12 subsection, the contract is void from the beginning and the parties are
13 in the same position as if no contract had been issued.

14 (e) If a service contract holder returns the contract in accordance
15 with this section, the insurer issuing the reimbursement insurance
16 policy covering the contract shall refund to the provider the full
17 premium by the provider for the contract if canceled within thirty days
18 or a pro rata refund if canceled after thirty days.

19 (5) A service contract provider shall not deny a claim for coverage
20 based upon the service contract holder's failure to properly maintain
21 the vehicle, unless the failure to maintain the vehicle involved the
22 failed part or parts.

23 (6) A contract provider has only sixty days from the date of the
24 sale of the service contract to the holder to determine whether or not
25 the vehicle qualifies under the provider's program for that vehicle.
26 After sixty days the vehicle qualifies for the service contract that
27 was issued and the service contract provider may not cancel the
28 contract and is fully obligated under the terms of the contract sold to
29 the service contract holder.

30 NEW SECTION. **Sec. 19.** A new section is added to chapter 48.110
31 RCW to read as follows:

32 (1) Except for service contract providers or protection product
33 guarantee providers, persons marketing, selling, or offering to sell
34 service contracts or protection products for providers are exempt from
35 the registration requirements of RCW 48.110.030.

36 (2) The marketing, sale, offering for sale, issuance, making,
37 proposing to make, and administration of service contracts or

1 protection products by service contract providers or protection product
2 guarantee providers and related service contract or protection product
3 sellers, administrators, and other persons complying with this chapter
4 are exempt from the other provisions of this title, except chapters
5 48.04 and 48.30 RCW and as otherwise provided in this chapter.

6 NEW SECTION. **Sec. 20.** A new section is added to chapter 48.110
7 RCW to read as follows:

8 (1) If the service contract provider or protection product
9 guarantee provider is using reimbursement insurance policy to satisfy
10 the requirements of RCW 48.110.050(2)(a) or section 17(2)(b) or
11 18(2)(a) of this act, then the reimbursement insurance policy shall be
12 filed with and approved by the commissioner in accordance with and
13 pursuant to the requirements of chapter 48.18 RCW.

14 (2) All service contracts forms covering motor vehicles must be
15 filed with and approved by the commissioner prior to the service
16 contract forms being used, issued, delivered, sold, or marketed in this
17 state or to residents of this state.

18 (3) All service contracts forms covering motor vehicles being used,
19 issued, delivered, sold, or marketed in this state or to residents of
20 this state by motor vehicle manufacturers or import distributors or
21 wholly owned subsidiaries thereof must be filed with the commissioner
22 for approval within sixty days after the motor vehicle manufacturer or
23 import distributor or wholly owned subsidiary thereof begins using the
24 service contracts forms.

25 (4) The commissioner shall disapprove any motor vehicle service
26 contract form if:

27 (a) The form is in any respect in violation of, or does not comply
28 with, this chapter or any applicable order or regulation of the
29 commissioner issued under this chapter;

30 (b) The form contains or incorporates by reference any
31 inconsistent, ambiguous, or misleading clauses, or exceptions and
32 conditions;

33 (c) The form has any title, heading, or other indication of its
34 provisions that is misleading; or

35 (d) The purchase of the contract is being solicited by deceptive
36 advertising.

1 NEW SECTION. **Sec. 21.** (1) RCW 48.110.030 (2) (a) and (b), (3),
2 and (4), 48.110.040, 48.110.060, 48.110.100, 48.110.110, section 18
3 (2)(a) and (b) and (4)(e) of this act, and section 20 (1) and (2) of
4 this act do not apply to motor vehicle service contracts issued by a
5 motor vehicle manufacturer or import distributor covering vehicles
6 manufactured or imported by the motor vehicle manufacturer or import
7 distributor.

8 (2) RCW 48.110.030(2)(c) does not apply to a publicly traded motor
9 vehicle manufacturer or import distributor.

10 (3) RCW 48.110.030 (2) (a) through (c), (3), and (4), 48.110.040,
11 and section 20(2) of this act do not apply to wholly owned subsidiaries
12 of motor vehicle manufacturers or import distributors.

13 (4) The adoption of this act does not imply that a vehicle
14 protection product warranty was insurance prior to October 1, 2006.

15 NEW SECTION. **Sec. 22.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

19 NEW SECTION. **Sec. 23.** The following acts or parts of acts are
20 each repealed:

21 (1) RCW 48.96.005 (Purpose) and 1990 c 239 s 2;

22 (2) RCW 48.96.010 (Definitions) and 1987 c 99 s 1;

23 (3) RCW 48.96.020 (Reimbursement policy required for sale of
24 service contract) and 1987 c 99 s 2;

25 (4) RCW 48.96.025 (Reimbursement policy--Insurer's responsibility)
26 and 1990 c 239 s 3;

27 (5) RCW 48.96.030 (Reimbursement policy--Required provisions) and
28 1990 c 239 s 6 & 1987 c 99 s 3;

29 (6) RCW 48.96.040 (Service contract--Required statements) and 1990
30 c 239 s 7 & 1987 c 99 s 4;

31 (7) RCW 48.96.045 (Service contract--Notice to holder) and 1990 c
32 239 s 4;

33 (8) RCW 48.96.047 (Service contract--Holder's right to return) and
34 1990 c 239 s 5;

35 (9) RCW 48.96.050 (Service contracts--Excluded parties) and 1990 c
36 239 s 8 & 1987 c 99 s 5;

1 (10) RCW 48.96.060 (Noncompliance as unfair competition, trade
2 practice--Remedies) and 1990 c 239 s 9 & 1987 c 99 s 6;
3 (11) RCW 48.96.900 (Application of chapter--Date) and 1987 c 99 s
4 7; and
5 (12) RCW 48.96.901 (Effective date--1990 c 239 §§ 2-10) and 1990 c
6 239 s 11.

7 NEW SECTION. **Sec. 24.** This act takes effect October 1, 2006."

SHB 2553 - S COMM AMD
By Committee on Financial Institutions, Housing & Consumer
Protection

ADOPTED 03/03/2006

8 On page 1, line 2 of the title, after "products;" strike the
9 remainder of the title and insert "amending RCW 48.110.010, 48.110.015,
10 48.110.020, 48.110.030, 48.110.040, 48.110.050, 48.110.060, 48.110.070,
11 48.110.080, 48.110.090, 48.110.100, 48.110.110, 48.110.120, 48.110.130,
12 48.110.140, and 48.110.900; adding new sections to chapter 48.110 RCW;
13 creating a new section; repealing RCW 48.96.005, 48.96.010, 48.96.020,
14 48.96.025, 48.96.030, 48.96.040, 48.96.045, 48.96.047, 48.96.050,
15 48.96.060, 48.96.900, and 48.96.901; prescribing penalties; and
16 providing an effective date."

--- END ---